

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4549 of 1996

with
SPECIAL CIVIL APPLICATIONS NOS. 395 TO 408 OF 1997 and
479 of 1997.

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

F S PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR KJ KAKKAD for Petitioners

MR M.R.ANAND ,G.P. WITH MISS KATHA GAJJAR,ASSTT.G.P.FOR RESPONDENT

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 30/01/97

ORAL JUDGEMENT

In this group of 12 petitions, the petitioners have inter alia contended that they discharge the duties in the District of Rajkot under the order of respondent

No.2-Collector,Rajkot district as peons, sweepers, peon-cum-driver, gardner, Hamal ,etc. They have contended that they are not paid even as per the provisions of the Minimum Wages Act. The petitioners are working on fixed salary and they are not getting any other benefits. It is also their case that they have put in more than three years' service and therefore, they are required to be regularised in service. Since the petitioners are denied their legitimate dues and wages, they have filed the present petition under Articles 226/227 of the Constitution of India. They have prayed for regularisation in service and to pay them above referred pay scale and other consequential benefits.

On behalf of the respondents, Mr K.D.Hathi has filed the affidavit in reply. It has been contended that insofar as the averments made in paras 2 and 9 of the petition are concerned, petitioners at sl.Nos. 1 to 7 are part-time adhoc employees working as Chowkidars, Mali and sweepers on fixed pay and allowances as per the rules and regulations; whereas petitioners Nos 8 to 12 are working as part time employees on payment of Rs. 100/- per month per hour which is maximum upto six hours. Their status,date of appointment and name of office in which they are working are elaborately mentioned in the affidavit. It would be profitable to refer the said relevant information. Details in respect of the petitioners are shown hereinbelow :

Name of Status Appointed vide working
petitioner order dated in which
office.

Firozkhan fixed 20.5.93 Collector office
Pathan pay Rajkot.

Deepak " 17.4.91 "
Bachubhai
Chauhan.

Kishor Tapu- " " "
bhai Makwana

Bharat Bhikha- Mali 3.11.89 "
bhai Dabhi

Bharat Naran- " 20.4.91 "
bhai Jadav

Solanki Paresh Sweeper 14.6.91 "

Manjibhai.

Rustam Bakubhai " 17.4.91 "
Sheth

Sanchania part- 31.1.91 Jilla Purvatha
Chandresh time branch,Collector
Ragjhavjibhai office,Rajkot.

Kureshi " 18.9.88 Small savings
Zarinaben bank,Collector
Yusubbhai

Lakhani " 27.1.93 Collector office
Kanaiyalal Rajkot.

Mustak Abdul- " 23.4.93 "
bhai Chania.

Mehta Praful " 1.8.87 Mamlatdar office.
Pravinchandra Lodhika.

It is also clearly stated in para 5 on behalf of the respondent-authorities in the said affidavit that under the provisions laid down in circular dated 26.12.1980, the part time employees who have put in continuous or constant three years' service may be accommodated on availability of vacant posts (relevant one). It is also pointed out that on last occasion, like that, 4.1.1992, before the ban came to be imposed, totally 11 such part time employees' services had been regularised under the office order dated 4.1.1992.

However, it is stated further in the affidavit that under the provisions laid down in the circular dated 21.8.1995, the subject matter and the provisions contained in the circular dated 26.12.1980 have been put in abeyance in view of the prevailing and undergoing economic measures and conditions in the Government set up. It is, therefore, contended that in view of the aforesaid circular dated 21.8.1995 and also in view of the vacant relevant posts, class IV employees could not be adjusted and accommodated on permanent posts in Government except on the last occasion on 4.1.1992 a reference of which has been made hereinbefore.

It was, therefore, submitted on behalf of the respondents that cases of the petitioners will be considered for regularisation after the ban imposed vide the circular dated 21.8.1995 is lifted. Whosoever has fallen within

the parameter and guidelines in the said circular dated 26.12.1980 will be considered for regularisation subject to vacant and relevant posts and seniority of such persons.

Learned advocate Mr. Kakkad for the petitioners, in view of the aforesaid statements does not invite further orders except contending that the petitioners who are working are also not paid minimum wages.

Miss Gajjar for the respondent-authorities states that in the event of a representation from the petitioners in this behalf, the same will be considered by the Government. Therefore, learned advocate Mr. Kakkad for the petitioners states that a representation on behalf of the petitioners will be made to the Government within a period of two weeks from today. The concerned authorities of the respondent will consider and decide the representation for grant of payment of minimum wages to the petitioners till regularisation in light of latest proposition of law, as early as possible preferably within three months from the date of receipt of the representation.

Learned advocate Mr. Kakkad for the petitioners has also submitted that status quo with regard to service conditions as on today may be continued till the Government decides the question of regularisation. This submission is opposed by Miss Katha Gajjar contending that indefinite interim order cannot be granted in favour of the petitioners. However, she states that the petitioners will be given job and work as and when it is available and that the petitioners' services will not be discontinued as long as work is available and thereafter juniors to the petitioners will not be given job. In light of the facts of the present case, status-quo as on today with regard to the service conditions of the petitioners shall be maintained by the respondents till the representation in respect of payment of minimum wages is finalised or till the end of April 1997, whichever is shorter. Ofcourse, it would be open to the respondents to discontinue services of the petitioners in accordance with provisions of law. However, the respondents shall not offer jobs to the juniors to the petitioners without first offering to the petitioners.

In view of the aforesaid statements on behalf of the respondent-authorities and the directions and observations of this court, learned advocate for the petitioners does not invite further orders contending that in case of difficulty, the court will be moved

appropriately.

Consequently, the entire batch of petitions shall stand disposed of in light of the aforesaid statements, observations and directions. Rule is discharged with no order as to costs. Direct service permitted.
